IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 200 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME-TAX

Versus

AHMEDABAD EAGLE ENGG PVT LTD

Appearance:

MR BB NAIK WITH MR MANISH R BHATT for Petitioner

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.R.DAVE

Date of decision: 10/02/99

ORAL JUDGEMENT (Per J.N.Bhatt, J.)

By this reference application, at the instance of the revenue-applicant, the Tribunal has referred the following two questions for our opinion:

"1. Whether, the net sales tax collections of

Rs.2,40,513/- are not taxable in the hands of the assessee, on the facts and in the circumstances of the case ?

2. Whether, on the facts and in the circumstances of the case, the net sales tax collection of Rs.2,40,513/- (collection Rs.3,79,070/- payment Rs.1,38,557/-) is not liable to be taxed as revenue receipt in the hands of the assessee for the assessment year in question ?"

The respondent-assessee was dealing in the business of manufacture and sale of steel furniture and other allied items. The assessee was, therefore, required to recover sales tax on sales on behalf of the State and Central Government. The amount collected by way of sales tax in all came to Rs.3,79,070/-. The assessee in maintaining the accounts ignored the total collections as income and payment as expenditure. Upon assessment, the concerned ITO took the view that the total collection of amount of sales tax by the assessee forms part and parcel of sale transaction and therefore it is trading or revenue receipt.

Upon an appeal at the instance of the assessee, the Appellate Assistant Commissioner held that the net sales-tax collection could not be assessed in the hands of the assessee. The Tribunal also in appeal against the view of the A.A.C. took the same view and the appeal came to be dismissed. Therefore, at the instance of the department, the aforesaid two questions have been referred for our opinion under section 256(1) of the Income Tax Act, 1961.

We have heard the learned counsel appearing for the revenue, whereas, none appeared for and on behalf of the respondent-assessee despite service, for the reasons not known to us.

After having heard the learned counsel for the revenue and taking into consideration the entire factual scenario and the relevant proposition of law together with the case law, in our opinion, the view taken by A.A.C. and confirmed by the Tribunal is not legal and sustainable for the reasons we articulate hereinafter.

Following facts have remained unimpeachable.

The assessee had collected net sales tax Rs.3,79,070/out of which an amount of Rs.1,38,557/- was paid to the

department being the amount of sales tax, whereas, the remaining amount of Rs.2,40,513/- was retained by the assessee, as worked out by the ITO being the difference between the sales tax collected and the payment made during the year. The amount of Rs.1,38,557/- which was deposited with the Government was allowed to be deducted whereas remaining amount of Rs.2,40,513/- was disallowed. Thus the said amount was brought to tax being an integral part of commercial transaction and also forming sales price or consideration.

However, the A.A.C. reversed the view of I.T.O. which also came to be confirmed by the Tribunal.

It was contended on behalf of the revenue that the assessee was rightly taxed by the ITO on the amount of net sales tax collection of Rs.2,40,513/- which remained in the hands of the assessee and wrongly reversed by the appellate authorities. In that, it was further submitted that since the net sales tax collection was Rs.3,79,070/- and only an amount of Rs.1,38,557/- was deposited with the Government, the remaining amount of Rs.2,40,513/- is liable to income tax being revenue receipt and, as such, received by the assessee. We find full substance in this contention, in the light of the facts of the case and the relevant proposition of law.

The Hon'ble Apex Court in Chowringhee Sales Bureau Pvt. Ltd v. Commissioner of Income-tax, (1973) 87 ITR 542 (SC), upon almost identical and similar factual aspects held that the amount of sales tax realised by the assessee is liable to tax and is required to be included in the total business receipts of the assessee. However, it was further held that the assessee can claim deduction as and when the assessee pays or deposits the amount with the Government. In fact, the proposition laid down is crystal clear in Chowringhee Sales Bureau Pvt. Ltd. (supra) that the collection of tax in the hands of the assessee is a business receipt and forming part of the profit and is liable to tax. In that case, a Private Limited Company - assessee, had realised from the purchasers, sales tax and had not paid the said amount either to the actual owner of the goods auctioned by the assessee in capacity as an auctioneer and also not deposited with the Government. Therefore, the amount of sales tax recovered and realised by the assessee did not go to the State Exchequer nor it was refunded to the original owners who participated in the auction. Therefore, it was held that the assessee in its character as an auctioneer, the amount received by him towards sales tax should be held forming part of its trading or

business receipt. However, it was clearly further observed that the assessee would be entitled to claim deduction of the said amount as and when it pays to the State Government or is paid to the original owner. The view propounded by the Hon'ble Apex Court, clearly, supports the view which we are inclined to take in this reference.

In Punjab Distilling Industries Ltd. v. Commissioner of Income-tax , (1959) 35 ITR 519 (SC), it was also held by the Hon'ble Apex Court that certain amount received by the assessee and giving the nomenclature of security deposits and also trading it and entering in a separate ledger termed "empty bottles return security deposit account" it was found and held that the amount which came to be named as security deposit was actually a part of the consideration and sale and therefore the part of the price of what was sold. Nor does it make any difference that the price of the bottle was entered in the general trading account while the so called deposit was entered in a separate ledger termed "empty bottles return deposit account", for, what was a consideration for the sale cannot cease to be so by being written up in the books in a particular manner. Therefore, it is very clear that it is not the head under which it is taken or entered in the accounts, but the nature and quality of the receipt is decisive and determinative. Our view is also, thus, very much reinforced by the ratio propounded in Punjab Distilling Industries Ltd. (supra).

In short, we are of the clear opinion that wherever a sale attracts an amount of tax, may be, in any name, but when it affects the price which the seller who is liable to pay the tax, is nothing but a commercial transaction and forming integral part of the consideration for sale. Not only that, it also does not cease to be a price which the buyer has to pay even if the price is expressed separately from the tax amount, for example, X plus purchase tax or X plus sales tax. Seller when offers goods for sale, it is for him to quote a price which includes the tax and if he desires to pass it on the buyer and when buyer agrees to the price quoted or offered, it is a part of consideration for sale and therefore it entails the part of total receipt of business.

During the course of submission, it was stated at the Bar that no specific provision has been made in the relevant legislations which would indicate that when the dealer or the seller collects any amount of tax, the said amount cannot form part of consideration for the item sold.

Even in case of Sinclair Murry & Company P. Ltd v. Commissioner of Income-tax, (1974) 97 ITR 615 (SC), the Hon'ble Apex Court has taken the same view. This Court in a Division Bench decision in Motilal Ambaidas v. C.I.T. (1977) 108 ITR 136 (Guj.) has followed the principles laid down in the aforesaid decisions of the Hon'ble Apex Court. Even in a case of refund of sale tax being the excess amount of the tax liability and which was recovered by the seller, was held to be the part and parcel of sale transaction and liable to sales tax. It was a case of refund of sales tax by the Department to the assessee and it was not shown as a receipt. This Court in clear terms held that it is receipt of business or income of the assessee. When the assessee collecting sales tax and paying to the Government and on being refunded, part of which is taxable in the hands of the assessee in whose knowledge it came to be received by way of refund. Of course, in that case, mercantile system of accounts was adopted by the assessee. Therefore, this Court has clearly propounded a proposition relying on the earlier decisions that whenever any sales takes place, whether the price quoted to the purchaser includes sales tax or whether sales tax is separately collected, the sales tax forms part of the consideration for the sale and therefore it forms part of turnover of the seller. The amount of sales tax payable in respect of sales effected by a particular assessee forms part of commercial transaction and trading receipts and has to be shown on the credit side as income. When assessee pays sales tax to the authorities, he can, obviously, claim deduction for the sales tax paid. In a case where he is to refund the sales tax to the original purchaser who purchased the goods from him, then the amount so refunded by the Department to the assessee would be taken on the expenditure side. Therefore, the clear proposition from the aforesaid decision is that the amount of tax recovered by the dealer or the seller when it forms an integral part of the commercial transaction of the sale, it is nothing but a trading receipt. It is the nature and the quality of the receipt and not head under which it is taken or entered in the account of the assessee would be determinative and decisive.

In view of the aforesaid clear proposition of law supporting the view which we are taking in this reference and in the light of the facts of the present case, the questions referred to us are required to be answered in the negative. Accordingly we answer questions No.1 and 2 in negative, that is to say, in favour of the revenue and against the assessee. The reference, therefore, shall

stand disposed of with no order as to costs.

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(vjn)